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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/706,570

11/12/2003

Michael A. Masini

MHM-00307/29

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25006

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04/06/2009

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EXAMINER

PATEL, TARLA R

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

04/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/706,570	<b>Applicant(s)</b> MASINI, MICHAEL A.	
	<b>Examiner</b> TARLA R. PATEL	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 2/3/09.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11,12,15-17,20,21,27,28,43 and 44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-12, 15-17, 20-21, 27-28 and 43-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Transitional After Final Practice***

1. In view of the Board Decision on 1/6/09, PROSECUTION IS HEREBY REOPENED. A non-final set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Technology Center Director has approved of reopening prosecution by signing below:

/DONALD HAJEC/

Director, Technology Center 3700

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 11, 12, 15-17, 20-21, and 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Zackheim (2,969,144). Regarding claims 11, 16 and 28, Zackheim discloses a wrapper or packaging (11) for a bandage (10), where said bandage has a patient contacting surface (12) with a peripheral edge, the patient-contacting surface and including an absorbent layer (14) are completely surrounded by an adhesive (13) that extends to the peripheral edge in all directions (see figures 1 & 7; col. 2, lines 44-69). Zackheim further teaches first and second removable sheets (20, 21) that both extending beyond the peripheral edge of the bandage and are peripherally joined so that the bandage is contained between the removable sheets until use (see figures 3 & 4 ; col. 2, line 70 through col. 3, line 27). It is further disclosed that one of said first and second sheets (20) is in direct contact with the entire adhesive on the patient-contacting surface until said sheet is removed for use (see col. 4 lines 32-col. 5, line 26 and figure 7).

With respect to claims 12 and 17, Zackheim also discloses that the first and second removable sheets are made of paper (see column 3, lines 37-42).

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With respect to claims 15 and 20, Zackheim also discloses that the first and second removable sheets include a dog-ear tab (30, 31) to assist in removal as shown in figures 3, 5 & 7.

With respect to claim 21, Zackheim discloses that the first and second removable sheets are peripherally joined with an adhesive (see column 3, lines 60-63).

With respect to claim 27, Zackheim discloses a method of applying a bandage having the construction as described above with respect to claim 16. Zackheim further teaches the steps of removing one of the first and second removable sheets to expose the entire patient-containing front surfaces, applying the bandage portion to a recipient using the adhesive, and removing the other removable sheet from the back surface of the bandage portion as shown in figures 7 and 8 (see column 4, line 32-column 5, line 2).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zackheim in view of Paxa (4,534,342). Zackheim substantially disclose the invention, as described with respect to claims 16 and 28; however, Zackheim does not discloses that the bandage has two ends and a mid section and wherein bandage portion is tapered such that the mid section is wider than one or both of the ends.

Paxa discloses a bandage for application to a nose. The bandage is made in a shape that has a mid section (22) and an end portion (26+28), wherein the mid section is tapered and wider than the end portions (see fig 1). This shape is a geometrical configuration to provide proportions that will better suite the anatomical features of the nose. It would have been obvious to one having ordinary skill in the art to make the bandage of Zakheim to have a tapered mid section larger than the end portions, as taught by Paxa, to provide bandages having different geometrical shapes for use on noses. Whether the tapered bandage portion with a mid section wider than one or both ends solves any particular problem or produces any unexpected result, the bandage having a tapered portion as claimed is merely a matter of engineering design choice, and thus does not serve to patentably distinguish the claimed invention over the prior art. See In re Kuhle, 526 F.2d.553, 188 USPQ7 (CCPA 1975).

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 11-12, 15-17, 20-21, 27-28 and 43-44 have been considered but are moot in view of the new ground(s) of rejection.

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### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TARLA R. PATEL whose telephone number is (571)272-3143. The examiner can normally be reached on M-T 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tarla R Patel/  
Examiner, Art Unit 3772

/Patricia Bianco/  
Supervisory Patent Examiner, Art Unit 3772  
04/03/09